

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENG0

**(CORAM: ODOKI, C.J., TSBKOOKO, KANYEIHAMBA, KATUREEBE
AND OKELLO. JJ.S.C.)**

**CIVIL APPEAL NO.20 OF 2007 BETWEEN
ATTORNEY GENERAL::::::::::::: APPELLANT**

AND

VIRCHAND MITHALAL& SONS LTD ::::::::::: RESPONDENTS

*(Appeal arising from the judgment and orders of the Court of Appeal
(,Mpagi - Bahigeine, Engivau, Kitumba, JJ.A.) in Civil Appeal No. 126. Of
2003, dated 4th, August,2006)*

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second appeal from the judgment and orders of the Court of Appeal dated 4th August, 2006 in which the Justices of Appeal confirmed the judgment and orders of the High Court (Ntabgoba, PJ), in Civil Suit No 687 of 1992. The learned Principal Judge allowed compensation due to the respondent to carry compound interest from the date the suit property was sold.

The background and facts of this case are straightforward and are not in dispute.

By authority of the provisions of the Expropriated Properties Act and under its section 11 in particular, the Government of

Uganda sold the respondent's property to the Uganda Co-operative Alliance in 1990. After the sale and transfer of the property, the respondent applied for repossession of the property. Repossession was refused on the ground that the property had already been alienated and disposed of. However, the Government legitimately and properly offered to compensate the respondent in the sum of Shs.

112,000,000/= which was accepted by the parties to be the true value of the property at the time of sale. Shortly after respondent's application to repossess the property, the government offered to compensate it but the respondent persisted in its refusal to accept the monetary value of the property and in 1992, filed a suit seeking repossession still. It was not until 2001 that the respondent abandoned its claim for repossession and accepted to be compensated for the loss of its property.

Thereafter and up to now the dispute revolves around the nature and quantum of interest to be paid to the respondent. In both High Court and Court of Appeal the respondent succeeded in being awarded compound interest. It is against the award of compound interest that the appellant has filed the appeal in this court.

The Memorandum of Appeal is based on one ground framed as follows:

The learned Justices of the Court of Appeal erred in law and fact when they held that the appellant pays compound interest to the respondent.

The Attorney General was represented by Ms Patricia Mutesi and she filed written submissions in accordance with Rule 93 of the Rules of this Court. The respondent was represented by Messrs

Sebalu, Lule & Company, Advocates and Legal Consultants, who also filed written submissions in reply.

Counsel for the Attorney General contends that the learned Justices of Appeal erred in law and in fact when they ordered the appellant to pay compound interest to the respondent. Counsel criticized the Court of Appeal for relying on two authorities, namely, **The Westdeutsche Landesbank Girozentrale v. Islington Borough Council**, (1996) All E.R.961, and **President of India v La Pintade Compania Navigacion**, S.A. (1985 A.C. 104, to conclude that courts may award compound interest where money is withheld by a person owing fiduciary duties to the plaintiff. Counsel contends that an understanding of the principles established in the two cases cited above suggests the contrary. In Counsel's view, compound interest may only be awarded if the party to be liable had wrongly utilized the money owed to make a profit and use that profit for further gains whereas if the party only held the money without making a profit on it or trading with it, the interest payable is simple interest. Similarly, the principle of allowing compound interest against a trustee is based not just on the fiduciary relationship between the trustee and the beneficiary, but on the fact that the trustee used the money to accumulate interest for his, her or its own benefit and not that of the beneficiary.

Counsel for the Appellant further contended that for a claim of a compound interest to succeed, the claimant must prove that the money carrying that interest can be identified and traced to the enrichment of the person liable either by way of trade or investment. Counsel submitted that, in this particular case there is no evidence

to show that the minister responsible or any government department used the purchase money improperly, let alone profited from it.

Counsel for the appellant submits also that the Court of Appeal erred in law when it failed to re-evaluate the evidence that led the trial judge to award compound interest. Counsel contends that until the judgment of the trial judge, there had been no demand for payment by the respondent which meant that the learned judge's award of compound interest was in error, and the learned Justices of Appeal ought to have corrected that error by reevaluating the evidence which they did not do. Counsel further contended that the order by the trial judge that the award of compensation carry interest from the date of sale of the property was in error and made contrary to the facts of the case, to wit, the parties only agreed on the principal sum to be paid long after the date of sale and the learned Justices of Appeal failed to reevaluate this evidence.

In support of her submissions, Counsel for the Attorney General cited the following authorities. The Westdeutsche case, President of India v. La Pintade case, (Supra), Halsbury's Laws of England, 4th Edition Volume 32 P 53, D.R. Pandya v. R (1957) E.A .336) Charles Lwanga v Centenary Rural Development Bank, (Civil Appeal No 30 of 1999 (C.A) Harbutt v. Wayne Tank Co (C.A) 1970, 1QB, 447, and Williamson Diamond Ltd and Another v Brown (1970 C.A. (C.A) E.A.1 (72)

For the respondent, counsel supports the findings, judgments and orders of both the High Court and Court of Appeal with regard to compound interest. Counsel contends that the award of compound interest in this appeal is justified by the facts of the case. In his

opinion, the award of interest is at the discretion of the Court in accordance with the provisions of **S.26 of the Civil Procedure Act, Cap 71**. Counsel for the respondent submitted that since there are no statutory provisions on compound interest, court is compelled to resort to principles of equity and what it considers to be just.

Citing the opinion of Lord Goff expressed in the case of **Westdeutsche** (*supra*), Counsel for the respondent submitted that compound interest may be awarded to do full justice not necessarily where money is wrongly withheld or improperly applied to benefit the person liable, but as appears reasonable to court. Counsel contends further that once a defendant admits that it benefited from the money the subject of adjudication, by utilising that money for own purposes, that alone establishes a fiduciary relationship between the parties and on that basis, the appellant becomes liable to pay compound interest. Counsel contends that the Court of Appeal properly evaluated the evidence in this case and, therefore, adequately discharged its duty as a first appellate court. Counsel submits that it is well settled that compound interest becomes payable from the date the amount is due.

Counsel for the respondent finally contends that Article 26(2) (b) of the Constitution provides for prompt, fair and adequate compensation of the value of the property. In support of the respondent's submission and arguments, the following additional authorities have been cited: **Black's Law Dictionary**, 8th Edition, **Banco Arabe Espanol v. Bank of Uganda**, Civil appeal No 8 of 1998 (S.C), **Mbogo and Another v. Shah**, (1968) E.A, 93, **Halderkiimar Mohendra v. Mathuradevi Mohinda**, Civil Appeal No 34/1952,

EACA. Uganda Breweries Ltd v Uganda Railways Corporation
(S.C)

Civil Appeal No.6 of 2001, **Kifamunte Henry v Uganda**, Criminal Appeal No 10 of 1997 (SC) (Unreported), and **Milly Masembe v Sugar Corporation and Kagiri Richard** (S.C) Civil Appeal No.1 of 2000.

Although reluctant at first, the respondent in this appeal eventually agreed to accept compensation for the loss of its property. The appellant readily offered to compensate the respondent. In my opinion, the liability whether to pay compound or simple interest can only commence from the date when the dispute whether to pay that interest is resolved. According to the pleadings in this appeal, that resolution has never been accepted by both sides and that is why this appeal is before this court. Had the respondent accepted the offer of the appellant to be compensated as an alternative to the repossession of its alienated property, interest would have accrued immediately from that acceptance. In fact, that is not what occurred.

The respondent refused to accept the principle of simple interest. The appellant declined to pay compound interest. The dispute was taken to court for resolution. After the High Court decided that it should be compound interest, the appellant objected and appealed to the Court of Appeal. When the Court of Appeal confirmed the decision of the learned trial judge, the appellant filed the appeal in this Court. Consequently, it is only after this Court has determined which of the two types of interest should be the basis of payment that the parties will know what to pay and receive and when.

In my opinion, a clear distinction needs to be made between the reasons for awarding a simple interest and those that justify an award of compound interest in legal proceedings. A simple interest arises invariably when a party which is liable or owes money fails to pay what is due before or on the date agreed, stipulated, implied. If the matter comes to court, the court exercises its discretion as to the rate and date when interest shall be paid. In this regard, counsel for the respondent is correct that unless there is an error of fact or in law, appellate courts hardly ever interfere with the trial court's discretion to award interest on terms and conditions the court deems justifiable on the facts and circumstances of a particular case.

The award of compound interest however depends on other different criteria beside the discretion of court. Compound interest is not founded simply on the mere fact of indebtedness nor on the date the principal debt becomes due nor on the duration it has taken to pay since accruing. It is based on one or more of a multiplicity of reasons such as the law applicable to the transaction, the nature of the business transacted or agreed between the parties, the construction of the agreement or contract made between the parties, the trade custom of the business out of which the indebtedness arose, intentions of the parties or the consequences of the commercial transaction that was concluded between them.

The arguments advanced on behalf of the respondent do not, in my opinion, point to the award of a characteristically compound interest. There has been no evidence presented or authorities cited to suggest that in this case compound interest was intended, implied or anticipated by the parties or implied by law. The authorities cited

in this appeal do not assist court to decide that there was a compound interest implied or contemplated in this case.

Lord Denning in the case of **Wallersteimer v Moir (No 2** [1975] All. E.R. 849 stated at p.855,

“Equity now prevails in all courts, and equity was in the habit of awarding interest when it was considered equitable to do so. In some cases it awarded simple interest, in others compound interest, i.e. with yearly tests. The principles on which the courts of equity acted are expounded in a series of cases ”


“Those judgments show that, in equity, interest is never awarded by way of punishment. Equity awards it whenever money is misused by an executor or a trustee or anyone else in a fiduciary position who has misapplied the money or made use of it himself for his own benefit. The court presumes that the party against whom relief is sought has made that amount of profit which persons ordinarily do make in trade and in those cases the court directs interest it to be paid [i.e. compound interest]

I think it is all a matter of evidence as to what happened between parties and the nature of the transaction. I agree that this case does not suggest an award of compound interest. No evidence shows that the money was misused in any way.

In my view, both the learned trial judge and the learned Justices of Appeal erred in law and fact in failing to appreciate the circumstances under which either simple or compound interests are awarded. As a result, judgments in both courts appear to be based on the assumption that the only difference between the two is the discretion of the court. I have endeavoured in this judgment to show that in law and in fact there is a world of difference between the principles under which simple interest may be awarded and compound interest earned. In my opinion, this appeal ought to succeed .

I would therefore allow the one ground of appeal. I would modify the orders of the Court of Appeal and those of the trial court and order that:

- a. Appellant pays the respondent the sum of Shs. 112,000,000/= being the sale price of the suit property.
- b. The appellant pays the respondent interest at the court rate of 6% from the date of the Decree in the High Court, namely 25th day of June, 2002.
- c. I would award costs in this court and in the courts below to the appellant.

Dated at Mengo this 21st day of April 2009

G.W.KANYEIHAMBA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

**(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND
OKELLO, JJ.SC)**

CIVIL APPEAL NO 20 OF 2007

BETWEEN

ATTORNEY GENERAL APPELLANT

AND

VIRCHAND NYTHALAL & SONS LTD RESPONDENT

*[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and
Kitumba, JJ.A) in Civil Appeal No. 126 of 2003 dated 4 August 2006]*

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Kanyeihamba JSC and I agree that this appeal ought to succeed. I concur in the orders he has proposed. As the other members of the Court also agree, this appeal is allowed with orders in the terms proposed by the learned Justice of the Supreme Court.

Dated at Mengo this .21st day of.. April 2009

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**B J Odoki
CHIEF JUSTICE**

REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

**(CORAM: ODOKI, CJ; TSEKOOKO, KANYEIHAMBA, KATUREEBE
AND OKELLO JJSC).**

CIVIL APPEAL NO. 20 OF 2007

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::APPELLANT

AND

VIRCHND MITHALAI 8c SONS LTD:::::::::::::::::::::::::::::::::RESPONDENT

*[Appeal from the Judgment and Orders of the Court of Appeal
at Kampala (Mpagi-Bahigeine, Engwau and Kitumba.JJA.) dated
4th August. 2006 in Civil Appeal No. 126 of 2003]*

JUDGMENT OF TSEKOOKO. JSC.

I have had the benefit of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC, which he has just delivered and I agree with the orders he has proposed.

May I just add that my understanding of S.26 (2) of the Civil Procedure Act is that award of interest by Courts is discretionary.

I also think that under this law, a Court can award compound interest if the facts of the case call for such an award even if there

is no specific agreement to that effect. That section reads follows:-

*“(2) Where and in so far as a decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of decree,-----
-----> with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit’*

Delivered at Mengo this 21 st day of.... April.....2009.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: ODOKI, CJ., TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ.SC).

CIVIL APPEAL NO. 20 OF 2007

BETWEEN

ATTORNEY GENERAL ::::::::::::::::::::::::::::::: APPELLANT

AND

VIRCHND MITHALAI & SONS LTD ::::::::::::::::::::::: RESPONDENT.

[Appeal from the Judgment and Orders of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Kitumba, JJA) dated 4th August, 2006 in Civil Appeal No. 126 of 2003]

JUDGMENT OF KATUREEBE, JSC.

~~I have had the benefit of reading in draft the Judgment of my learned brother, Kanyeihamba, JSC. I fully agree with him that this appeal succeeds for the reasons he has given. I also concur in the orders he has proposed.~~

~~DATED at Kampala this day~~
o f . . 2 1 ^{s t} o f A p r i l . . . 2009.

~~Bart m. Katureebe~~
Justice of The Supreme Court

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT MENGO
(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA
KATUREEBE AND OKELLO, JJSC.)

CIVIL APPEAL NO. 20 OF 2007

B E T W E E N

A T T O R N E Y G E N E R A L :

A P P E L L A N T

A N D

V I R C H A N D M I T H A L A L & S O N S L T D :

R E S P O N D E N T

*[An appeal from the decision of the Court of Appeal at
Kampala (Mpagi-Bahigeine, Engwau and Kitumba, JJA) in
Civil suit No.126 of 2003, dated 4th August, 2006].*

JUDGMENT OF G. M. OKELLO, JSC:

~~I have had the privilege to read in draft the judgment of my learned brother, Kanyeihamba, JSC and I agree with his reasoning and conclusion that the appeal must succeed. I also concur with the orders he proposed. I have nothing useful to add.~~

. day of: April

..... 2009.

Dated at Mengo this: .

G. M. OKELLO
JUSTICE OF THE SUPREME COURT